UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

COLASANTI SPECIALTY SERVICES, Inc., formerly known as COLASANTI CORPORATION [1]

Employer

and **Case 7-RC-22719**

LOCAL 514, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CI0
Petitioner

and

LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS, AFL-CIO
Intervenor

APPEARANCES:

Robert E. Day, Attorney, of Detroit, Michigan for the Employer.
Eric Frankie, Attorney, of Detroit, Michigan, and Dan Rauch for the Petitioner.
John Adam, Attorney, of Royal Oak, Michigan for the Intervenor.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

[1] The name of the Employer appears as amended at the hearing.

Upon the entire record [2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Overview

The Petitioner seeks to represent a unit of all full-time and regular part-time cement masons employed by the Employer out of its facility located at 24500 Wood Court, Macomb Township, Michigan, but excluding office clerical employees, confidential employees, guards and supervisors as defined in the Act. The Employer agrees with the unit sought by the Petitioner. The Intervenor contends that the unit should be limited to those employees working in Michigan in Wayne, Oakland, Macomb, and Monroe counties.[3]

I find the petitioned-for unit to be appropriate. In so finding, I do not give the historical geographical limitations controlling weight over the demonstrated shared community of interest among the employees.

The Employer's Operations

The Employer is a Michigan corporation engaged in the construction industry as a cement masonry contractor throughout the United States from its facility located at 24500 Wood Court, Macomb Township, Michigan. It forms and pours concrete footings, slabs, and walls. The Employer is a multi-million dollar enterprise. It operates in Michigan and other states, such as Alabama, Missouri, Ohio, Iowa and Texas, for such businesses as Wal-Mart and General Motors. Its projects include parking lots, stadiums, and hospitals.

[2] The Employer and Petitioner filed briefs, which were carefully considered.

[3] It also contends that the election should be by mail ballot instead of on-site. The mechanics of the election, including whether the election should be conducted by mail or manually is not a litigable issue for representation hearings. This is an administrative matter and will be determined at the time the election arrangements are made.

In 2004, Colasanti Corporation split and formed into two companies. One is the Employer and the other is a general contracting department of Colasanti that operates out of Detroit, Michigan.

Carey Colasanti is the owner and president of the Employer and oversees the daily operation of the company. He is involved in bidding jobs, hiring staff, approving contracts and all other areas of the company. Below him in the hierarchy are Keith Colasanti, vice president, and Don Kosnik, the chief financial officer. Beneath them are project executives, project managers, and superintendents. Jeffrey Garrett is the general superintendent over the cement workers and laborers. He has the authority to hire and fire employees.

The Macomb Township facility serves as the primary location for all functions of the Employer. All jobs are bid and awarded out of that facility. The coordination, pre-planning, setup, payroll, hiring, and all related human resource work occur at or out of the Macomb facility. All personnel and payroll records are maintained there. Timesheets are collected and reviewed at Macomb by Garrett. Each jobsite is assigned a foreman and that foreman faxes timesheets to Garrett for daily review by him. Payroll checks are generated at Macomb and signed by Carey Colasanti. The Macomb facility includes a shop where all the Employer's equipment is housed and maintained.

Each jobsite has a foreman, who is a member of the unit. These foremen oversee the work performed at the site and report hours worked and problems to Garrett or Colasanti on a daily basis. Although Garrett and/or Colasanti are not present at every site every day, they are both involved in the day-to-day operation of all work sites.

To perform its work, the Employer has a core group of employees that it sends to its work sites in Michigan and around the country. These core employees are members of the Petitioner and are highly skilled in their craft and in the requirements of the Employer. They perform the vast majority of the Employer's cement mason work. The Employer supplements its core employees at its various jobsites by hiring local cement workers through local cement workers unions[4] and other employees through unions such as the Laborers. The nature of the Employer's work requires the experienced core employees to travel from site to site, often on a daily basis, to ensure the quality and consistency of the work. The Employer currently employs approximately 12-15 core employees and approximately 13-18 out-of-state employees. At its peak in 2000, the Employer had as many as 60 employees.

When core employees are sent to an area outside their own local area, they continue to receive the same wage rates and benefits. Their fringe benefit contributions

[4] The Petitioner does not seek to represent employees hired temporarily by the Employer for either in-state or out-of-state jobs.

are remitted to the Petitioner. When employees are hired temporarily in other unions' jurisdictions, their own local contract applies as far as working conditions, but they are paid under the wage structure of their local contract or the Petitioner's contract, whichever rate is higher.

Bargaining History

The Employer has a bargaining history with the Petitioner. Prior to 2003, the Employer was a signatory member of the Associated General Contractors of America (AGC), Greater Detroit Chapter, and this association had a combined agreement with the Petitioner and the International Union of Bricklayers and Allied Craftworkers, Local 1. The last agreement between these parties to which the Employer was bound had a term from June 1, 2000 to May 31, 2003. In 2003, the Employer resigned from the AGC and withdrew its power of attorney. On June 1, 2003, the Petitioner and the Employer entered into a collective bargaining agreement with effective dates from June 1, 2003 to May 31, 2006. This contract is limited to the geographical areas of Wayne, Oakland, and Macomb counties in Michigan. Although not stated, it is presumed that this contract is a Section 8(f) contract[5].

The Employer also has a bargaining history with the Intervenor. Prior to 2003, the Employer was a non-member signatory to the contract between the Michigan Council of Employers of Bricklayers and Allied Craftworkers (MCE) and the Intervenor. The last contract between the parties to which the Employer was bound had a term from June 22, 2000 to August 1, 2003. By letter dated May 8, 2003, the Employer terminated its participation in MCE and its agreement with the Intervenor.

The Employer also has bargaining relationships with many other unions. It has collective bargaining agreements with Laborers Local 334, covering work in Wayne County, and with Laborers Local 1076 for Oakland County, and separate agreements with Operating Engineers Local 324, Ironworkers Local 25, and the Carpenters District Council for work in the lower peninsula of Michigan. It is or was signatory to a contract with Operative Plasters Local 886, out of Toledo, Ohio. It also has agreements with several out-of-state unions.

[5] In the absence of evidence to the contrary, the Board presumes that in the construction industry, the parties intend their relationship to be governed by Section 8(f) of the Act, rather than Section 9(a), and imposes the burden of proving the existence of a Section 9(a) relationship on the party asserting that such a relationship exists. ***H.Y Floors & Gameline Painting***, 331 NLRB 304 (2000), citing ***John Deklewa & Sons***, 282 NLRB 1375 (1987), enfd. sub nom. ***Iron Workers Local 3 v. NLRB***, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). No evidence was presented that this is a Section 9(a) contract and it does not contain any language attempting to establish a Section 9(a) relationship.

Analysis

The Act does not require that the petitioned-for unit for bargaining be the only appropriate unit, or the most appropriate unit; the Act requires only that the unit be appropriate. ***Overnite Transportation Co.***, 322 NLRB 723 (1996); ***Vincent M. Ippolito, Inc.***, 313 NLRB 715, 717 (1994); ***Morand Bros. Beverage Co.***, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951).

In determining whether employees are properly included in a bargaining unit, the Board looks to whether the employees share a community of interest. The Board, in evaluating the community of interest of employees, considers the nature and skill of employee functions, the situs of the work, the degree of common supervision, working conditions, benefits, interchange and contact among employees, the functional integration of the facility, and bargaining history. ***Kalamazoo Paper Box Corp***., 136 NLRB 134, 137 (1962); see also, ***P.J. Dick Contracting, Inc.***, 290 NLRB 150, 151 (1988), citing ***Metropolitan Life Insurance Co.***, 380 U.S. 438 (1965). When the proposed bargaining unit covers multiple worksites, as here, the Board pays extra attention to the consistency of employees' interests across different sites. ***RC Aluminum Industries, Inc***. 326 F.3d 235 (D.C. Circuit 2003), citing ***Alley Drywall, Inc***., 333 NLRB 1005, 1006 (2001).

The record shows that the core employees who work in Wayne, Oakland, Macomb, and Monroe counties for the Employer are the same employees who the Employer uses wherever it has business. These employees are used first because of their expertise and experience, and are supplemented by other less experienced employees who may be local or from another state.

In a case decided only weeks ago, the Board stated "[w]e start with the basic proposition that where an employer uses a core group of employees to work at its various worksites regardless of job location, the proper unit description is one without geographic limitation." ***Premier Plastering, Inc.***, 342 NLRB No. 111, slip op. at 2 (Sept. 16, 2004). Thus, it is clear that, in the absence of any consideration of the history of bargaining between the parties, the petitioned-for unit without geographic limit is an appropriate unit for collective bargaining purposes. The record shows that the unit constitutes a clearly identifiable unit consisting of the Employer's employees who are engaged in shared and clearly identifiable work and share the same terms and conditions of employment regardless of where the work is performed. ***Alley Drywall, Inc***., supra at 1006. In addition, those employees have a continuity of employment from job to job with the Employer. ***Id.*** However, the Intervenor contends that the unit is inappropriate because it has a broader geographical area than the area contained in the current Section 8(f) contract between the Petitioner and the Employer, and because it encroaches on the area once under the Intervenor's geographical jurisdiction in the historical Section 8(f) contract with the MCE.

While there is a history of bargaining that favors geographically separate units, the existence of similar skills, functions, and terms and conditions of employment as well as the integration of all aspects of the Employer's operations and administration outweighs the existence of this prior bargaining history with the two associations. ***Id.*** Additionally, while the Board gives weight to bargaining history, bargaining history is not the conclusive consideration in determining whether a petitioned-for unit is appropriate. ***Premier Plastering, Inc.***, supra. Thus, I do not give the historical geographical limitations controlling weight, as the record demonstrates no rational basis for doing so. See, ***A.C. Pavement Striping Company, Inc***., 296 NLRB 206, 210 (1989).

Accordingly, I find that the employees in the unit proposed by the Petitioner share a community of interest sufficient to make the unit appropriate.

5. Based on the above, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time cement masons employed by the Employer out of its facility located at 24500 Wood Court, Macomb Township, Michigan[6], but excluding office clerical employees, confidential employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election[7].

Dated at Detroit, Michigan, this 5th day of October 2004.

"/s/[Stephen M. Glasser]."

(SEAL) /s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue-Room 300
Detroit, Michigan 48226

[6] The record contains references to the Petitioner seeking a statewide unit, excluding the upper peninsula. The Employer noted that it has never had work in the upper peninsula. As set forth in this Decision, the unit found appropriate is not classified or limited by geographic location. ***Premier Plastering, Inc.***, supra.

[7] The parties discussed, but did not stipulate to, the use of the construction industry eligibility formula set forth in ***Daniel Construction Co.***, 133 NLRB 264 (1961) as modified in 167 NLRB 1078 (1967) and ***Steiny & Co.***, 308 NLRB 1323 (1992). Absent a stipulation not to use the ***Daniels/Steiny*** eligibility formula, the formula applies to all construction industry elections. ***Signet Testing Laboratories***, 330 NLRB 1 (1999), citing ***Steiny & Co.*** Thus, the ***Daniels/Steiny*** eligibility formula will apply, as noted in the attached Direction of Election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees who have been employed for 30 working days or more within the 12 months preceding the eligibility date or if they have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Ineligible are those employees who had been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**LOCAL 514, OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES
AND CANADA, AFL-CI0**

or

**LOCAL 9, INTERNATIONAL UNION
OF BRICKLAYERS AND ALLIED
CRAFT WORKERS, AFL-CIO**

or

NO UNION

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **October 12, 2004.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by**, October 19, 2004**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be stopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies

the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.